

201106122

Daniel Barreto

Bernice Gracia

On May 6, 2011, PO Barreto and PO Gracia pulled over a car, purportedly because it lacked a front license plate and registration. The driver took out his cell phone and recorded the entire incident. The officers told the driver that he lacked a front license plate and registration, and the driver pointed to his temporary drivers' license that was hanging from his rear mirror. The officers took the man's paperwork, including his driver's license, and returned to their car. Fifteen minutes later, they returned the paperwork and Officer Barreto stated that he would let the man off with a warning. The man asked what he was being warned about, since he had done nothing wrong, and PO Barreto stated that his rear windows were tinted too dark to see the registration. The man said the windows were not tinted (and photographs he provided to the CCRB five days later showed they were not tinted). PO Barreto returned the paperwork. The man also accused PO Barreto of hitting his face with the paper while handing it to him, which PO Barreto later denied.

The man then asked if PO Barreto was assigned to the 69<sup>th</sup> Precinct, and PO Barreto stated that he was. The man stated he knew officers in the 69<sup>th</sup> Precinct, and asked PO Barreto his name. PO Barreto twice stated that his name was "Johnson." After the incident, the man went to the 69<sup>th</sup> Precinct and was told there was no officer Johnson.

The officers were identified by the video recording. When interviewed, before being shown the recording, PO Barreto stated he did not recall being asked his name. When shown the video, PO Barreto stated that when the man asked which precinct they were from, PO Barreto thought the man was asking what precinct they were currently in. (In fact the incident took place on the border of the 69<sup>th</sup> and 75<sup>th</sup> precincts). PO Barreto also stated, when shown the video, that the man was not asking his name and that he had said "Johnson" because he thought the man's name was Johnson and he was wishing him good night. In fact the recording clearly captures the man saying "tell me your name, if you don't care tell me what your name is," and later "tell me your name" and each time PO Barreto responded "Johnson."

PO Gracia, interviewed a few days later, testified that PO Barreto had said "good night Mr. Johnson" to the man before she was shown the video and did not change her story when she was confronted with the video.

The CCRB found that PO Barreto had failed to provide his name when asked and that both officers lied in their CCRB interviews. PO Barreto was compelled to forfeit 40 vacation days and has since been promoted to sergeant. PO Gracia cannot be found in the NYPD officer database, which tracks officers by their current name.

## CCRB INVESTIGATIVE RECOMMENDATION

|  |                                     |                           |   |                                    |  |
|--|-------------------------------------|---------------------------|---|------------------------------------|--|
| Investigator:<br>Adriana Lizarazo                | Team:<br>Team # 2                   | CCRB Case #:<br>201106122 | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|  |                                     |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Fri, 05/06/2011 10:00 PM     | Location of Incident:<br>[REDACTED] | Precinct:<br>75           | 18 Mo. SOL<br>11/06/2012                              | EO SOL<br>11/6/2012                |  |
| Date/Time CV Reported<br>Thu, 05/12/2011 3:56 PM | CV Reported At:<br>CCRB             | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Thu, 05/12/2011 3:56 PM |                                    |  |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| [REDACTED]         | [REDACTED] | [REDACTED]   |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED]  | [REDACTED]   |

| Subject Officer(s)    | Shield | TaxID      | Command |
|-----------------------|--------|------------|---------|
| 1. POM Daniel Barreto | 29988  | § 87(2)(b) | 075 PCT |
| 2. POF Bernice Gracia | 03611  | § 87(2)(b) | 075 PCT |

| Officer(s)             | Allegation  | Investigator Recommendation |
|------------------------|---|-----------------------------|
| A . POM Daniel Barreto | Abuse of Authority: PO Daniel Barreto stopped the car in which § 87(2)(b) was an occupant.                            | A . § 87(2)(g)              |
| B . POM Daniel Barreto | Force: PO Daniel Barreto used physical force against § 87(2)(b).  | B . § 87(2)(g)              |
| C . POM Daniel Barreto | Abuse of Authority: PO Daniel Barreto refused to provide his name to § 87(2)(b).                                      | C . § 87(2)(g)              |
| D . POM Daniel Barreto | Other: PO Daniel Barreto intentionally made a false official statement in violation of Patrol Guide Procedure 203-08. | D . § 87(2)(g)              |
| E . POF Bernice Gracia | Other: PO Bernice Gracia intentionally made a false official statement in violation of Patrol Guide Procedure 203-08. | E . § 87(2)(g)              |

### Case Summary

On May 12, 2011, § 87(2)(b) called the CCRB and filed this complaint. On May 6, 2011, at approximately 10:00 p.m., § 87(2)(b) was in the parking lot of a supermarket at § 87(2)(b) in Brooklyn when PO Daniel Barreto and PO Bernice Gracia stopped his vehicle. The following allegations resulted.

**Allegation A- Abuse of Authority: PO Daniel Barreto stopped the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

**Allegation B- Force: PO Daniel Barreto used physical force against § 87(2)(b)**

§ 87(2)(g)

**Allegation C- Abuse of Authority: PO Daniel Barreto refused to provide his name to § 87(2)(b)**

§ 87(2)(g)

**Allegation D- Other Misconduct Noted: PO Daniel Barreto intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

**Allegation E- Other Misconduct Noted: PO Bernice Gracia intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

§ 87(2)(g)

This case was initially eligible for mediation however on May 16, 2011, § 87(2)(b) rejected to mediate his complaint § 87(2)(b).

### Results of Investigation

#### Civilian Statement(s)

**Complainant:** § 87(2)(b)

- § 87(2)(b)

#### CCRB Statement

§ 87(2)(b) provided an initial statement on May 12, 2011 (encl.6A-6B) and was interviewed at the CCRB on May 17, 2011 (encl.7A-7J). § 87(2)(b)

On May 6, 2011, at approximately 9:45 p.m., § 87(2)(b) was driving his § 87(2)(b) and he picked up his cousin, § 87(2)(b) at § 87(2)(b) in Brooklyn. § 87(2)(b) then made a right turn on § 87(2)(b) and a left in the middle of the street to go into the parking lot of the Pathmark supermarket located at § 87(2)(b)

§ 87(2)(b) noticed an unmarked black Impala driving the opposite direction on § 87(2)(b) and the driver in this vehicle, identified through investigation as PO Daniel Barreto of the 75<sup>th</sup> Precinct, made eye contact with § 87(2)(b) and made a U-turn to follow him.

§ 87(2)(b) was looking for a parking spot and PO Barreto pulled up behind § 87(2)(b)'s vehicle with his lights and sirens inside the parking lot. § 87(2)(b) waited for the officers to approach his vehicle and he turned on his cell phone to record the incident. PO Barreto approached the driver side of the vehicle and his partner, identified through investigation as PO Bernice Gracia of the 75<sup>th</sup> Precinct, approached the passenger side.

§ 87(2)(b) asked PO Barreto if he had probable cause to stop him. PO Barreto asked § 87(2)(b) to put his cell phone down and told him that he did not see a license plate on the front of the vehicle and that § 87(2)(b) did not have a registration sticker. § 87(2)(b) refused to put his cell phone down and told PO Barreto that he would rather record the incident. PO Barreto became agitated and said that since § 87(2)(b) is recording, he will make sure to do his job properly.

§ 87(2)(b) provided his documents to PO Barreto and explained that his car was registered in § 87(2)(b) and that he currently has a thirty days temporary license plate which he had displayed on the back window. PO Barreto and PO Gracia went back to the police car for approximately fifteen minutes and when PO Barreto and PO Gracia came back, PO Barreto told § 87(2)(b) that he was going to give him a warning. § 87(2)(b) asked PO Barreto what the warning was for and the officer replied that it was because § 87(2)(b) had tints on his windows and therefore, he could not see the temporary license plate on the back window. § 87(2)(b) told PO Barreto that his windows did not have tints and explained that the windows came with a temporary glass from the manufacturer.

§ 87(2)(b) told PO Barreto that he was dealing with a good person and that he no longer drives a car with tinted windows, he does not drive his car full of people and he does not walk with his pants off his "ass." § 87(2)(b) became a little aggressive, though in an orderly fashion, because he wanted to distract PO Barreto from shining his flashlight at § 87(2)(b)'s phone.

PO Barreto became irritated and gave back § 87(2)(b) his documents through the window one by one. PO Barreto was using his right hand and when he handed § 87(2)(b) the last document, he struck § 87(2)(b)'s left cheek bone with his knuckles. § 87(2)(b) told PO Barreto that he had just hit him with his hand but PO Barreto denied it.

§ 87(2)(b) asked PO Barreto if he works at the 69<sup>th</sup> Precinct and told him that he has friends there who will not be happy to hear what the officer did to him. PO Barreto said that he does work there and walked away towards his car with PO Gracia. § 87(2)(b) asked PO Barreto for his name twice and both times PO Barreto replied "Johnson."

The officers drove away and § 87(2)(b) recorded with his cell phone the license plate of the police car, § 87(2)(b), § 87(2)(b) and the outside of his own vehicle to show that the windows were not tinted. § 87(2)(b) then drove to the 69<sup>th</sup> and 75<sup>th</sup> Precincts and was informed that no officers by the name Johnson were on duty. § 87(2)(b) went home and after reviewing the video footage, he saw that the name of the officer was Barreto. § 87(2)(b) called the 75<sup>th</sup> Precinct and pretended to be someone from the media to obtain PO Barreto's first name.

**Witness:** § 87(2)(b)

- § 87(2)(b)

### CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on June 6, 2011(encl.8A-8D). § 87(2)(g)

§ 87(2)(b) she provided the following additional details.

At some point during the vehicle stop § 87(2)(b) took off her seatbelt and PO Barreto asked her why she was not wearing her seatbelt. § 87(2)(b) told the officer that they were not going anywhere and that she took it off to be more comfortable. § 87(2)(b) thought that PO Barreto was being rude and she looked to PO Gracia who was standing next to her and PO Gracia made a gesture with her face to let § 87(2)(b) know that everything was fine.

PO Barreto returned § 87(2)(b) his paperwork in a rough manner and when PO Barreto handed the last document to § 87(2)(b) he hit him in the left side of his face. PO Barreto and PO Gracia walked back to the police car and § 87(2)(b) asked PO Barreto for his name and command. PO Barreto said in response that his name is Johnson and that he works at 69<sup>th</sup> Precinct.

### NYPD Statement(s):

#### Subject Officer: PO DANIEL BARRETO

- He is a § 87(2)(b) Hispanic male who is 6'2" tall, weighs 290 pounds and has black hair and brown eyes.
- On May 6, 2011, PO Barreto worked from 4:00 p.m. until 12:35 a.m., on the next day. He was assigned to operation impact and was working with PO Gracia. He was dressed in uniform and was working in an unmarked vehicle number § 87(2)(b)

### Memo Book:

At 9:50 p.m., car stopped in front of § 87(2)(b) § 87(2)(b) with no plates, registration sticker peeled off, tinted back window and unable to see temporary NY plate until on foot. Stop and frisk report prepared for suspicion of grand larceny auto for § 87(2)(b) § 87(2)(b) (encl.11A-11C).

### CCRB Statement

PO Daniel Barreto was interviewed at the CCRB on June 17, 2011 (encl.12A-12D). He provided the following statement.

On May 6, 2011, at approximately 9:50 p.m., PO Barreto and PO Gracia were driving southbound on § 87(2)(b) when they observed a male, identified as § 87(2)(b) driving a green Lexus in the opposite direction. PO Barreto did not see a license plate on the front and the vehicle did not have a registration sticker. When the vehicle drove passed the officers, PO Barreto did not see a plate on the rear of the car and the back seat windows and rear window were tinted. § 87(2)(b) also bent down his body in a way that PO Barreto considered to be a furtive movement. At this point, PO Barreto decided to stop § 87(2)(b)'s vehicle and when he made a U-turn, § 87(2)(b) made an abruptly sharp left turn into the parking lot of a shopping center at § 87(2)(b) in Brooklyn.

PO Barreto stopped § 87(2)(b)'s vehicle and when he approached the driver side, PO Barreto noticed a temporary license plate displayed on the left side of the back window. PO Gracia approached the passenger side of the vehicle. PO Barreto asked § 87(2)(b) for his driver's license, insurance and registration and § 87(2)(b) was very angry and annoyed from the beginning. § 87(2)(b) accused PO Barreto of profiling him and he also stated that if he was the "old § 87(2)(b) things would be different and that he is a changed man. § 87(2)(b) was argumentative, combative and was recording the incident on his phone. § 87(2)(b) was annoyed when PO Barreto flashed his light inside § 87(2)(b)'s car and said that PO Barreto



was lucky that he did not stop § 87(2)(b) a few years ago. PO Barreto indicated that he considered § 87(2)(b)'s statement a threat.

PO Barreto and PO Gracia went back to their vehicle and PO Gracia ran § 87(2)(b)'s documents. The officers went back to § 87(2)(b)'s vehicle and PO Barreto gave § 87(2)(b) his documents back in his hand one at a time. When PO Barreto handed him the last document, § 87(2)(b) claimed that PO Barreto had assaulted him because the paper had allegedly hit him in his eyeball. PO Barreto told § 87(2)(b) that he had not touched him and walked back to the police car with PO Gracia. PO Barreto denied touching § 87(2)(b) in his face with the paper and/or his hand and he denied using any other type of physical force against § 87(2)(b). PO Barreto indicated that § 87(2)(b)'s physical condition was normal and his eye and/or face did not appear to be swollen.

PO Barreto did not recall being asked for his name, shield number and/or command. However, PO Barreto remembered that towards the end of the incident, § 87(2)(b) asked him if they were in the "69." PO Barreto replied "yes" because he believed that § 87(2)(b) had asked him if they were within the confines of the 69<sup>th</sup> Precinct. PO Barreto explained during his interview that the parking lot where the incident took place is in the 69<sup>th</sup> Precinct.

PO Barreto was shown photographs of § 87(2)(b)'s vehicle and although he did recognize the vehicle, PO Barreto indicated that on the date of the incident the two back windows and rear window were tinted which was not reflected on the photographs.

At minute 12:38 of the interview, PO Barreto was shown a few seconds of the beginning of the video footage provided by § 87(2)(b) and the last part of the incident in which PO Barreto returned the documents to § 87(2)(b). After reviewing the footage, PO Barreto stated that he did not hear § 87(2)(b) ask him for his name and that he was not able to hear what § 87(2)(b) was saying to him.

When PO Barreto heard himself say in the video "go ahead" and then "Johnson" PO Barreto indicated that what he said was "good night Mr. Johnson." PO Barreto explained that he made that statement because he thought that "Johnson" was § 87(2)(b)'s last name. PO Barreto further stated that when he entered the car, PO Gracia asked him who Mr. Johnson was and told him that the name was § 87(2)(b). PO Barreto reviewed the last seconds of the video footage two more times and he maintained that he did not hear § 87(2)(b) ask him for his name and that what he said was "good night Mr. Johnson."

#### **Subject Officer: PO BERNICE GRACIA**

- *She is a § 87(2)(b) Hispanic female who is 5'4" tall, weighs 160 pounds and has brown hair and brown eyes.*
- *On June 22, 2011, PO Gracia worked from 4:00 p.m. to 12:35 a.m., on the next day. She was assigned to operation impact and was working with PO Barreto. She was dressed in uniform and was working in an unmarked vehicle #§ 87(2)(b).*

#### **Memo Book**

At 9:50 p.m., stop and frisk report prepared by PO Barreto in regards to a car stop (grey Lexus operated by § 87(2)(b) in front of § 87(2)(b). Unable to see temporary NYS plate on rear window glass until the motor vehicle was approached. Registration sticker was missing on windshield (encl.13A-13C).

#### **CCRB Statement**

PO Bernice Gracia was interviewed at the CCRB on June 22, 2011 (encl.14A-14B). § 87(2)(g) she provided the following additional information.

PO Gracia believed that § 87(2)(b)'s vehicle had tints and although she was not sure if all windows were tinted, she did recall the back window being dark. PO Gracia ran § 87(2)(b)'s out of state driver license and there were no hits. PO Barreto and PO Gracia went back to § 87(2)(b)'s vehicle and PO Gracia saw PO Barreto give § 87(2)(b) his documents back. PO Barreto never hit § 87(2)(b) in his face with his hand and/or the papers and she did not hear § 87(2)(b) complain of getting hit.

PO Gracia was unable to describe § 87(2)(b)'s demeanor because she was by the passenger side and was mainly concentrated on § 87(2)(b). However, PO Gracia saw that § 87(2)(b) had a cell phone in his hand and he made a lot of hand movements. PO Gracia was unable to hear anything that was said between PO Barreto and § 87(2)(b) because § 87(2)(b) only had one third of his window down.

When PO Gracia and PO Barreto walked back to their vehicle, § 87(2)(b) said something out the window but PO Gracia just heard muffle. PO Gracia did not hear § 87(2)(b) ask PO Barreto if he was from the 69<sup>th</sup> Precinct and at no point heard § 87(2)(b) say anything in regards to the 69<sup>th</sup> Precinct. PO Gracia did not hear § 87(2)(b) say that he was going to make a complaint and/or something to that effect.

As PO Barreto got in the car, he told § 87(2)(b) "good night Mr. Johnson." PO Gracia asked PO Barreto who Mr. Johnson was and PO Barreto replied that he was referring to the operator of the vehicle they had just stopped. PO Gracia corrected PO Barreto and told him that the name was § 87(2)(b).

At minute 10:00 of the interview, PO Gracia was shown the last part of the footage of this incident and PO Gracia maintained that she did not hear § 87(2)(b) ask PO Barreto for his name. PO Gracia also heard PO Barreto say in the video "go ahead" and "Johnson" and she sustained that what PO Barreto had said was "good night Mr. Johnson."

### **Medical Records**

§ 87(2)(b)'s medical records from § 87(2)(b) on § 87(2)(b), indicated that § 87(2)(b) reported being assaulted by a police officer the night before during a vehicle stop. § 87(2)(b) also stated that when the officer returned him his documents, he was struck several times with hand and paper. § 87(2)(b) also reported that a police officer punched him in his left eye and complained of facial pain. The degree of pain was minimal and the left side of his face presented swelling and tenderness. § 87(2)(b) was diagnosed with a facial contusion and was not prescribed any medications (encl.15A-15L).

### **NYPD Document(s)**

#### **Stop and Frisk Report**

The Stop, Question and Frisk Report § 87(2)(b) prepared by PO Barreto on May 6, 2011 (encl.10A), indicated § 87(2)(b) was stopped at § 87(2)(b) in Brooklyn for suspicion of grand larceny auto. The officers observed § 87(2)(b) for two minutes and the duration of the vehicle stop was 10 minutes. The reason for the stop was furtive movements, no license plates, peeled registration sticker and an obstructed temporary plate. Additional circumstances that led to the stop were that the area has high incidence of reported offense, the time of day corresponding to criminal activity and changing direction at sight of officers. § 87(2)(b) was not frisked and/or searched and his demeanor was angry, annoyed, combative and he recorded the conversation. The report also indicated that § 87(2)(b) stated "If this was the old § 87(2)(b) things would be different."

## Other Evidence

### Video Footage

Video recording #045 lasts 17 minutes and 57 seconds and captured the interaction between § 87(2)(b) and PO Barreto in the parking lot of § 87(2)(b) in Brooklyn (encl.9A-9B).

#### Summary of minute 00.01 to minute 2:28:

- PO Barreto approached § 87(2)(b) vehicle and asked him to turn the radio down. § 87(2)(b) complied and PO Barreto asked § 87(2)(b) to put his cell phone down. § 87(2)(b) refused because he was going to record the incident and asked PO Barreto for his probable cause. PO Barreto replied that his probable cause was that § 87(2)(b) did not have a license plate and § 87(2)(b) refuted saying that he did have a temporary license plate which he had displayed on the rear mirror.
- PO Barreto told § 87(2)(b) that when he passed him in the opposite direction, § 87(2)(b) did not have a license plate on the front of the vehicle and the registration sticker was peeled off. § 87(2)(b) explained to PO Barreto that the Department of Motor Vehicles told him to keep the temporary license plate where he had it and PO Barreto asked § 87(2)(b) for his driver's license and paper work.
- § 87(2)(b) asked what PO Barreto's probable cause was again and PO Barreto replied, "you want to record this conversation and talk about probable cause; I will do my job the right way." § 87(2)(b) handed his driver license and registration to PO Barreto and turned the camera around to record himself saying that he was pulled over by the Pathmark shopping area with no probable cause.
- PO Barreto was still by the driver side and asked § 87(2)(b) where the insurance was. § 87(2)(b) provided PO Barreto with the insurance and told him that he loves being the "good guy" and that if it was a few years ago, the officer could do him dirty. PO Barreto asked § 87(2)(b) in response, "I can do you dirty, sir?" and flashed his light inside the car to where § 87(2)(b) was sitting. PO Barreto then said that § 87(2)(b) was not wearing her seatbelt and § 87(2)(b) replied that she had just taken it off to go to the supermarket but that § 87(2)(b) told her to stay in the car. PO Barreto said that § 87(2)(b) did not have the seatbelt on regardless.
- PO Barreto asked § 87(2)(b) to stay in the vehicle and walked back to the police car. § 87(2)(b) yelled at the officer "no problem sir, thank you." § 87(2)(b) was loud and sounded irritated for the majority of this incident.

#### Summary of minutes 2.29 to 14:59:

- No interaction between § 87(2)(b) and PO Barreto was captured.

#### Summary of minute 15:00 to 17:57:

- PO Barreto approached the driver side of § 87(2)(b)'s vehicle with § 87(2)(b)'s paperwork in his left hand. PO Barreto told § 87(2)(b) that he was going to give him a warning and § 87(2)(b) asked him what the warning was for and what had he done to be given a warning. PO Barreto told § 87(2)(b) that he could not see his temporary plate because of the tints and that it was dark outside.
- § 87(2)(b) told PO Barreto that his car did not have tints and that what he had was factory tints from the manufacturer. § 87(2)(b) stated that the § 87(2)(b) that PO Barreto was talking to is "the good § 87(2)(b)" and that therefore he prevents "certain things." § 87(2)(b) also said that he does not drive cars with tints anymore, he



does not drive cars with a bunch of people inside anymore and he does not walk with his pants off his "ass" anymore.

- PO Barreto asked § 87(2)(b) if he was listening to him and said again that he was going to give him a warning. § 87(2)(b) complained of being harassed and said that he is a tax paying citizen. § 87(2)(b) also stated that maybe four years ago he would have been ignorant and an "asshole" but that he did not feel that he had done anything illegal.
- PO Barreto handed § 87(2)(b) back his driver's license, registration and insurance, one by one, using his right hand. The video mostly captured PO Barreto's left side of his body but his hand movement does not appear to be forceful.
- When PO Barreto gave § 87(2)(b) the last document, § 87(2)(b) complained that PO Barreto had hit him in his face. PO Barreto denied it and § 87(2)(b) stated, "you just hit me in my face with the paper."
- § 87(2)(b) moved his cell phone up to record PO Barreto's face and asked him are you from the 69? to which PO Barreto replied "yeah."
- PO Barreto began walking back to the police car. The distance between § 87(2)(b)'s car and the police car was only a few feet and the behavior of both parties appeared that they could hear one another.
- § 87(2)(b) yelled out the window that he has some friends at the 69 who are not going to be happy.
- § 87(2)(b) also yelled, "tell me your name, if you don't care tell me what your name is" and PO Barreto replied something that sounded like "Johnson." § 87(2)(b) then stated "because I will go there right now" (referring to the 69th Precinct) to which PO Barreto replied "go ahead."
- § 87(2)(b) asked PO Barreto again "what is your name?" and this time, the recording clearly captured PO Barreto responding "Johnson."
- § 87(2)(b) recorded the outside of his vehicle to show that he did not have tints and that he had a temporary license plate displayed on the rear window. During the entire incident, the driver side window was completely down and the temporary license was hardly visible.

### **Photographs**

§ 87(2)(b) provided six 8x11 photos of his vehicle with the temporary license plate displayed and the left side of his face. § 87(2)(b) said the photos were taken on the night of May 6, 2011, by § 87(2)(b)'s wife. The photographs of § 87(2)(b)'s car reflect no tinted windows and the photographs of § 87(2)(b)'s face reflect no injuries (encl.7C-7H).

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of July 11, 2011 with regard to the incident (encl.17C).

### **Civilian(s) Criminal History**

- As of July 7, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

### **Civilian(s) CCRB History**

- § 87(2)(b) has filed the following CCRB complaints (encl.5A):

- § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

#### **Subject Officer(s) CCRB History**

- PO Barreto has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl.3A-3B).
- PO Gracia has been a member of the service for five years and there are no substantiated CCRB allegations against her. (encl.4A).

#### **Conclusion**

#### **Identification of Subject Officer(s)**

PO Barreto and PO Gracia acknowledged their interaction with § 87(2)(b). Because PO Barreto indicated that he was the one who made the decision to stop § 87(2)(b)'s vehicle, Allegation A is being pled against him.

#### **Investigative Findings and Recommendations**

#### **Allegation A- Abuse of Authority: PO Daniel Barreto stopped the car in which § 87(2)(b) was an occupant.**

Regarding this allegation the investigation determined the following key facts: PO Barreto and PO Gracia stopped § 87(2)(b)'s vehicle because they did not see a license plate and the registration sticker was peeled off. The incident took place at nighttime in an area known to the officers for its criminal activity of cars frequently being broken into and stolen. PO Gracia and PO Barreto were unable to see the temporary license plate that § 87(2)(b) had displayed on the rear window until they approached the vehicle on foot. The video footage showed that even a few feet away from the vehicle, the temporary license plate was hardly visible.

§ 87(2)(g)

#### **Allegation B- Force: PO Daniel Barreto used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that when PO Barreto gave him his paper work back, he hit him once on his left cheekbone with the knuckles of the officer's right hand. The video footage showed that § 87(2)(b) complained that the officer had hit him in the face with a paper and § 87(2)(b)'s medical records § 87(2)(b)

PO Barreto denied touching § 87(2)(b) with his hand and/or paper and the video footage did not reflect any force being used against § 87(2)(b)

§ 87(2)(g)

**Allegation C- Abuse of Authority: PO Daniel Barreto refused to provide his name to § 87(2)(b)**

Regarding this allegation, the investigation determined the following key facts: PO Barreto was standing next to § 87(2)(b)'s vehicle and § 87(2)(b) asked him once for his command. PO Barreto replied that he was from the 69<sup>th</sup> Precinct and started to walk back to the police vehicle with PO Gracia. § 87(2)(b) asked PO Barreto for his name three times and PO Barreto replied at least once that his name is Johnson.

Patrol Guide Procedure 206-03 states that a violation subject to command discipline is when an officer refuses to provide his/her name and/or shield number when requested by a person (encl. 1A-1C).

PO Barreto and PO Gracia claimed that they did not hear § 87(2)(b) ask PO Barreto for his name and command. PO Barreto and PO Gracia reviewed the video which captures PO Barreto stating "Johnson" right after § 87(2)(b) had asked him for his name a third time. PO Barreto and PO Gracia claimed that what PO Barreto had actually said was "good night Mr. Johnson." § 87(2)(g)

§ 87(2)(b) spoke loud and clear and although PO Barreto was walking away from § 87(2)(b)'s vehicle, the video proves that PO Barreto heard and understood what § 87(2)(b) had asked him as he actively participated in the conversation with § 87(2)(b) and provided him with rational but false responses.

**Allegation D- Other Misconduct Noted: PO Daniel Barreto intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

**Allegation E- Other Misconduct Noted: PO Bernice Gracia intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

Patrol Guide Procedure 203-08 indicates that an example of a false official statement includes lying in an interview pursuant to Patrol Guide Procedure 211-14 "Investigation by Civilian Complaint Review Board" (encl. 2A).

PO Barreto initially did not recall being asked for his name and command. PO Barreto reviewed the video footage of this incident and he claimed that when § 87(2)(b) had asked him if he was from the 69<sup>th</sup> Precinct, he believed that he was being asked if they were within the confines of the 69<sup>th</sup> Precinct. § 87(2)(g)

§ 87(2)(b) In addition, the incident location is not in the confines of the 69<sup>th</sup> Precinct and it borders both the 69<sup>th</sup> and the 75<sup>th</sup> Precincts. PO Barreto also claimed that when he was walking back to the police car, he was unable to understand anything of what § 87(2)(b) was saying to him. § 87(2)(g)

PO Barreto was shown the last part of the video footage three times during his interview and when PO Barreto heard himself say "go ahead" right after § 87(2)(b) had told him that he was going to go to the 69<sup>th</sup> Precinct and then "Johnson" after being asked for his name. PO Barreto claimed and maintained that what he actually said was "good night Mr. Johnson." PO Barreto did not mention the "good night Mr. Johnson" until he was confronted with factual evidence. Furthermore, the video footage is clearly audible and it never captures PO Barreto saying "good" or "night" or "Mr."

PO Gracia was interviewed at the CCRB a few days after PO Barreto and her statement was almost identical to PO Barreto's statement even before watching the video footage. § 87(2)(g)

§ 87(2)(g) [Redacted]  
§ 87(2)(g) [Redacted]  
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§ 87(2)(g) [Redacted]  
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Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date